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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

LEE SPREWELL,

Defendant and Appellant.

B211620

(Los Angeles County
Super. Ct. No. BA339288)

APPEAL from a judgment of the Superior Court for the County of Los Angeles.
Marcelita V. Haynes, Judge. Affirmed.

Tara Hoveland, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

SUMMARY

Lee Sprewell pled no contest to a charge of possession of a controlled substance and admitted one prior strike conviction, in exchange for dismissal of a second strike allegation and a negotiated sentence of 32 months. At the sentencing hearing, Sprewell made an oral motion to withdraw his plea, but then, without a ruling from the court on his motion, requested immediate sentencing. The court then sentenced him to the agreed 32 months in state prison. On appeal, Sprewell's counsel filed a brief requesting this court's independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436. Our review of the record shows no arguable issues, and we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On May 15, 2008, Sprewell was charged by information with possession for sale of cocaine base, in violation of Health and Safety Code section 11351.5. The information also alleged two prior convictions of a serious or violent felony (voluntary manslaughter (Pen. Code, § 192, subd. (a)) and robbery (Pen. Code, § 211)), resulting in prior prison terms. (Pen. Code, § 1170.12, subds. (a)-(d); 667, subds. (b)-(i); 667.5, subd. (b).)

According to police reports, officers had been monitoring activity at a residence on South Bonsallo Avenue and, in the course of an hour, had observed approximately eleven unknown pedestrians walking up to the front porch and knocking on the door. The pedestrian would be admitted to the residence by a person later identified as Sprewell, and would leave a minute or two later. Pursuant to a search warrant, the police entered the residence and heard a commotion in the kitchen. Sprewell emerged from the kitchen with his hands in the air, and an officer observed small pieces of white solids resembling rock cocaine on Sprewell's hands. The police found several small broken pieces of off-white solids resembling rock cocaine and two razor blades on the countertop. The police further observed a crock pot filled with boiling oil; a police officer testified at the preliminary hearing that it was a common practice for narcotics dealers to maintain readily accessible hot oil in order to destroy cocaine (which dissolves in hot oil) in the event of a police raid. The police recovered approximately \$75 in cash from the kitchen countertop, and \$605 was found in Sprewell's pocket.

After a number of continuances, the case was set for trial on Friday, August 29, 2008. The court advised Sprewell that it was not willing to strike Sprewell's two strikes and place him on probation. The court further advised him that if he went to trial and were convicted, the minimum sentence would be six years (and the maximum 11 years), whereas the prosecution was offering him 32 months.

Sprewell initially said that he "want[ed] to take the trial because I don't see it as fair." The court advised him that the jury would make the decision, and if they found him guilty, the court could not give him a 32-month sentence. Counsel asked for an opportunity for Sprewell to think about it until 1:30 p.m., but the court refused, stating that the jury panel would be there, this was a four-day case, and the court had to leave the state on the following Thursday night. After a 15-minute recess, the defendant observed that he was "feeling violated any way it goes," and was "in between the rock and a hard place" Sprewell decided to proceed with trial; the court ordered a panel for the afternoon session.

In the afternoon, the court announced that the panel of prospective jurors was ready, but gave Sprewell "one last opportunity," telling him that even if he were convicted of simple possession, he would be in prison longer than with the prosecution's offer. After conferring with his counsel several times, Sprewell said, "I guess I'm going to have to go on and take it." The court said it would not take a plea "where you – you feel you're forced." Sprewell said he did not feel forced and was "thinking about my babies." After a statement from his counsel, Sprewell said, "I'm taking it. But I don't feel like – I mean, you know, I'm taking it for the simple fact I just want to get back to my babies, you know." And, "If it was just me, I'd fight it." The court said, "It seems to me you're concerned about making sure you get home as soon as possible to your family and your children," and Sprewell responded, "Correct."

The court then informed Sprewell of the consequences of his plea, all of which Sprewell said he understood. The court identified the rights Sprewell was giving up, and Sprewell indicated that he was doing so freely and voluntarily. The prosecutor then moved to amend the information so that it alleged a violation of Health and Safety Code

section 11350, subdivision (a), possession of cocaine base. Sprewell pled no contest to that charge. Sprewell's counsel concurred in the plea, and stipulated to a factual basis for the plea based upon the police reports, discovery, and the preliminary hearing transcript. Sprewell admitted his prior conviction for violating Penal Code section 211; counsel concurred in the admission and stipulated to a factual basis for the admission.

The court found that Sprewell freely, voluntarily, knowingly and intelligently waived his rights, that he understood the nature and consequences of his plea, and that there was a factual basis for the plea. The court accepted the plea, finding the defendant guilty of the possession offense and finding the prior conviction to be true. The court scheduled sentencing for October 3, 2008.

On October 3, 2008, Sprewell's counsel was in another court, and a substitute requested a continuance to October 9, 2008. Sprewell agreed to that date, and then began to suggest to the court that he was rushed into agreeing to his plea deal by the court's personal schedule. The court stated, "Sir, I'm not letting you withdraw your plea. Talk to your lawyer. . . . You don't even know how good a deal you got. I'm not going there with you."

At the sentencing hearing on October 9, 2008, Sprewell's counsel advised the court that Sprewell wanted to withdraw his plea, that he (counsel) could not in good faith indicate to the court that there were grounds to withdraw the plea, and that the court might wish to appoint someone else to review that issue. The court observed that it was not a conflict to find out what grounds there would be for withdrawing the plea, and stated "[w]ithout being told what the grounds are – somebody needs to tell me, otherwise, his – your motion to withdraw is denied, and his motion to withdraw is denied. You just don't come out and say I want to withdraw my plea."

After Sprewell and his counsel conferred, Sprewell told the court that on the day of his plea, the bus on which he was being transported had an accident, and he was given a drug, "[s]o I wasn't in my right state of mind to begin with," and "I felt like I was being forced," and "[m]y whole intention never was to take no deal, no nothing," and "everything was rushed upon me" The court observed that counsel wanted time to

investigate “whether or not [Sprewell] was on some kind of mind altering drug . . . ,” and counsel agreed to investigate. After discussion of how long the investigation would take, the court read excerpts from the transcript of the plea proceedings to Sprewell, and asked him if he remembered what he had said. Sprewell responded affirmatively. The court asked him if he still wanted to withdraw his plea, and Sprewell said that he did, because he wanted to fight the case.

After further discussion, the court said it would continue the sentencing to Monday, November 10, 2008, and asked Sprewell if he would waive time for sentencing to that date. Sprewell indicated that he would not waive time for sentencing, and that he was “tired of this court.” When the court reminded him of his request to his attorney to investigate grounds for withdrawing his plea, Sprewell still refused to waive time, saying “let me get this done and get me an appeal” The court again asked Sprewell if he wanted his attorney to investigate grounds for withdrawal of his plea. Sprewell said no, refused to waive time for sentencing, and stated, “I want to be sentenced right now. Sentence me right now.”

The court then sentenced Sprewell pursuant to the plea agreement to the low term in state prison of 16 months, doubled under Penal Code sections 1170.12 and 667. The court ordered Sprewell to register as a narcotics offender, provide a DNA sample, and pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), and a \$200 parole revocation restitution fine (stayed) (Pen. Code, § 1202.45). The court gave him credit for 261 days in custody (175 days of actual custody and 86 days of goodtime/work time).

The court’s minute order and abstract of judgment evidence the imposition of a fine in the amount of \$50 under Health and Safety Code section 11372.5 (the criminal laboratory analysis fee), and penalty assessments of \$50 (Pen. Code, § 1464) and \$35 (Gov. Code, § 76000). The court did not reference the lab fee and penalty assessments at the time it orally pronounced sentence.

Sprewell filed an appeal, and we appointed counsel to represent him. Sprewell’s appointed counsel filed a brief pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436, setting

forth the facts of the case, but raising no specific issues. The clerk of this court directed Sprewell's counsel to send the record and a copy of the appellant's brief to Sprewell, and Sprewell was notified of his right to submit, by brief or letter, any grounds of appeal, contentions or argument he wished the court to consider, within 30 days of the notice. We have not received any brief or letter from Sprewell.

DISCUSSION

We have undertaken a review of the entire record in this case and find no arguable issues. Sprewell's sentence comported with his plea agreement, and the record demonstrates that the plea was voluntarily and knowingly made, and that no ground exists for its withdrawal. (Cf. *Brady v. United States* (1970) 397 U.S. 742, 755 [guilty plea entered by one fully aware of the direct consequences must stand unless induced by threats, misrepresentations or promises that are by their nature improper]; *In re Troglin* (1975) 51 Cal.App.3d 434, 438 [a defendant will be held to the terms of his plea bargain in the absence of public policy or statutory, decisional or constitutional principles directing otherwise].)

The fines also comport with statutory requirements. As previously noted, the court did not reference the \$50 lab fee and \$85 in penalty assessments at the oral sentencing hearing, although the fee and penalty assessments were recorded in the court's minute order and abstract of judgment. Because the lab fee and penalty assessments are mandatory, the failure to reference them at the oral sentencing hearing is not ground for appeal. (Cf. *People v. Taylor* (2004) 118 Cal.App.4th 454, 456 [modifying the judgment in a *Wende* appeal, without requesting supplemental briefing, where the trial court failed to impose the \$50 drug laboratory analysis fee and applicable penalty assessments under Penal Code section 1464 and Government Code section 76000].)

DISPOSITION

The judgment is affirmed.

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BENDIX, J.^{*}

We concur:

FLIER, Acting P. J.

BIGELOW, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.